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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/777,544

02/06/2001

Thomas Dietz

14186

7213

23389

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05/04/2005

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EXAMINER

WANG, SHENGJUN

ART UNIT

PAPER NUMBER

1617

DATE MAILED: 05/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/777,544

Applicant(s)

THOMAS DIETZ

Examiner

Shengjun Wang

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9, 12, 13 and 15-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 4, 9, 12, 13 and 15-17 is/are rejected.
- 7) ☒ Claim(s) 2, 5-8, 18-23 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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### **DETAILED ACTION**

A request for continued examination under 37 CFR 1.114 was filed in this application after appeal to the Board of Patent Appeals and Interferences, but prior to a decision on the appeal. Since this application is eligible for continued examination under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e) has been timely paid, the appeal has been withdrawn pursuant to 37 CFR 1.114 and prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on February 3, 2005 has been entered.

#### ***Claim Objections***

1. Claims 2, 5-8, 18-23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Claim Rejections 35 U.S.C. 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-4, 9, 12, 13, 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cauwet-Madin (US Pat. 6,488,780 B2).

The instant claims 1, 3-4, and 9 are directed to emulsions, which are free of silicone oil and comprise polyether siloxanes of formula (1). The instant claims 12, 13, 15 and 16 are directed to

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a process for preparing such emulsions. And claims 17 is directed to emulsions which comprise 10% by weight or Less of alcohol and at least one polyether siloxane of formula (1). Additional cosmetic or pharmaceutical components are claimed in the dependent claims.

Cauwet-Martin teaches detergent cosmetic compositions. The compositions comprise a washing base and a conditioning system with an oil nanoemulsion, wherein the oil droplets is less than 150 nm (see abstract, col. 1, lines 52-64). The washing base is generally aqueous (see col. 2, lines 29-31). The reference teaches that the aqueous medium can be composed solely of water or a mixture of water and a lower alcohol such as ethanol (see col. 11, lines 11-17). The conditioning system comprises at least one non-ionic amphiphilic lipid, which is preferably chosen from polyether siloxanes (see col. 5, lines 25-50; and claims 13 and 15). Suitable oils for the emulsion include animal or vegetable oils (see col. 10, Lines 24-57). Additional co-emulsifiers are taught under the category of ionic amphiphilic lipids (see col. 6, Line 24 through col. 10, line 23). Weight percentages are taught (see col. 10, lines 19-23). Stearic acid is particularly mentioned as a possible component (see col. 3, lines 5-7) Additional active ingredients are taught ( See col. 10, line 60 through col, 11, line 2). While all of the claimed limitations are taught by Cauwet-Martin, the reference lacks disclosed examples of the exact same scope as the instant claims. The reference is not anticipatory as it requires some "picking and choosing" to arrive at the claimed compositions and methods.

It would have been obvious to one of ordinary skill in the art to have modified the compositions and methods of Cauwet-Madin by the selection of various components taught therein in order to arrive at cosmetically acceptable compositions. For example, in arriving at a composition that is "free of silicone oils" as claimed, it would be necessary to omit silicone oils

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from the compositions of Cauwet-Madin. While Cauwet-Martin teaches that silicone oils can also be used in the oil phase (see col. 10, Lines 24-57), the reference does not teach or suggest that silicone oils are necessarily present in the compositions. The motivation for selecting various components taught by Cauwet-Madin is to arrive at a cosmetically acceptable composition.

***Response to the Arguments***


3. Applicants' amendments, remarks, and the declaration under 37 CFR 1.132 have been fully considered. The 132 declaration and the remarks are persuasive in establishing an unexpected benefit for the polyether siloxane surfactant as an emulsifier in an oil in water emulsion wherein the emulsion comprising liquid-crystalline-structure forming hydroxyphilic waxes and/or water swellable organopolymers. Therefore, subject matters in claims 2, 5-8 and 18-23 are found allowable based on the unexpected benefit. Claims 1, 3-4, 9, 12, 13, 15-17 are rejected for reason set forth above. The established unexpected results do not commensurate in scope with those claims. Note, claims 15 and 16 would be allowable if the limitation "free of silicone oils" is added.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shengjun Wang whose telephone number is (571) 272-0632. The examiner can normally be reached on Monday to Friday from 7:00 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan, can be reached on (571) 272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
**SHENGJUN WANG**  
**PRIMARY EXAMINER**  
Shengjun Wang  
Primary Examiner  
Art Unit 1617